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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/588,696	06/07/2000	Yujiro Suzuki	325772017700	8631
25227	7590	02/03/2004	EXAMINER	
MORRISON & FOERSTER LLP 1650 TYSONS BOULEVARD SUITE 300 MCLEAN, VA 22102				LEUNG, QUYEN PHAN
ART UNIT		PAPER NUMBER		
		2828		

DATE MAILED: 02/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 09/588,696	<b>Applicant(s)</b> SUZUKI, YUJIRO
	<b>Examiner</b> Quyen P. Leung	<b>Art Unit</b> 2828

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a)  The period for reply expires 3 months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  they raise the issue of new matter (see Note below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_.

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_.
4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: see the attachment.
6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_.

Claim(s) objected to: \_\_\_\_.

Claim(s) rejected: \_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_.

8.  The drawing correction filed on \_\_\_\_\_ is a) approved or b) disapproved by the Examiner.
9.  Note the attached Information Disclosure Statement(s)( PTO-1449) Paper No(s). \_\_\_\_.
10.  Other: \_\_\_\_.

### ***Response to Arguments***

1. Applicant's arguments filed 12/30/03 have been fully considered but they are not persuasive. Applicant argued that:
  - a. Examiner's "argument cannot be correct. For example, even when the window [applicant's analogy of Gasser's film] is placed in a dark room, a light beam from a secondary light source, for example, a flash light, can pass through the window... For example, when stray light becomes incident on the layer while not being irradiated by the light source, Gasser's layer allows the stray light to pass through. However, the claimed device is configured to change the intrinsic light transmitting property of the film depending on whether the film is irradiated by the light emitting element or heated. As a result, when stray light becomes incident on the film while not being irradiated by the light emitting element or heated, the film does not allow the stray light pass through, contrary to the behavior of the Gasser's layer explained above."
2. In response to applicant's argument, Examiner objects to applicant's analogy of Gasser's thin film to a transparent window mainly because Gasser's thin film of Si, Ge or **Sb** (see the abstract) is not glass. Webster's dictionary defines window as "a framework enclosing a pane of glass". While glass may be transparent to light, each of Si, Ge and Sb obviously has different optical properties from glass. In fact, it is was previously established that Gasser et al teaches the same material—Sb-- as applicant. Note applicant's specification page 12 lines 3-8 for the teaching of the Sb material.

Likewise, Gasser et al teaches in its abstract, Sb as a thin film for light emitting device (10). So applicant's argument is not found persuasive because applicant is not making a fair comparison and, in the case applicant still argues otherwise, it does not jive with applicant's own example.

[57]

**ABSTRACT**

A method for passivating mirrors in the process of fabricating semiconductor laser diodes is disclosed. Key steps of the method are: (1) providing a contamination-free mirror facet, followed by (2) an in-situ application of a continuous, insulating (or low conductive) passivation layer. This layer is formed with material that acts as a diffusion barrier for impurities capable of reacting with the semiconductor but which does not itself react with the mirror surface. The contamination-free mirror surface is obtained by cleaving in a contamination-free environment, or by cleaving in air, followed by mirror etching, and subsequent mirror surface cleaning. The passivation layer consists of Si, Ge or Sb.

3. In further response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., secondary light sources or stray light) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

As claimed, there is only mention of light that is emitted from the light emitting element—for example, see proposed amended claim 1, lines 2, 5 and 6.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quyen P. Leung whose telephone number is (571)272-1943. The examiner can normally be reached on 8:30-5:00, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Ip can be reached on (571)272-1941. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Quyen P. Leung  
Primary Examiner  
Art Unit 2828

QPL